

**MOTION UNDER 28 U.S.C. § 2255 TO VACATE, SET ASIDE, OR CORRECT  
SENTENCE BY A PERSON IN FEDERAL CUSTODY**

United States District Court		District Western Dist. of Mo. S. Div.
Name (under which you were convicted):		Docket or Case No:
CLIFFORD KINKADE		
Place of Confinement:		Prisoner No: <del>322</del> 32481-045
FORT WORTH FMC		
Movant	V.	United States of America
CLIFFORD KINKADE		

**MOTION**

1. (a) Name and location of court that entered the judgment of conviction you are challenging:  
 U.S. DISTRICT COURT, Western District of Missouri, Southern Division  
 1400 U.S. COURTHOUSE, 222 JOHN Q HAMMONS PKWY, Springfield, Mo. 65806.
- (b) Criminal docket or case number (if you know): 6:17-cr-03073-MDH-1
2. (a) Date of the judgment of conviction (if you know): \_\_\_\_\_
- (b) Date of sentencing: June 26, 2019
3. Length of sentence: 240 months
4. Nature of crime (all counts): 18 U.S.C. § 2422(b), Coercion or Enticement of Minor;
5. (a) What was your plea: (Check one)  
 (1) Not guilty ☐ (2) Guilty ☒ (3) Nolo contendere (no contest) ☐
- (b) If you entered a guilty plea to one count or indictment, and a not guilty plea to another count or indictment, what did you plead guilty to and what did you plead not guilty to?  
COUNT 3 above in #4. counts of Sexual Exploitation of Children - dismissed  
& Coercion or Enticement of Female - dismissed

6. If you went to trial, what kind of trial did you have? (Check one) Jury ☐ Judge Only ☐

7. Did you testify at a pretrial hearing, trial, or post-trial hearing? Yes ☐ No ☐

8. Did you appeal from the judgment of conviction? Yes ☒ No ☐

9. If you did appeal, answer the following:

(a) Name of court: United States Court of Appeals For the 8th Circuit

(b) Docket or case number (if you know): No: 19-2387

(c) Result: Dismissed

(d) Date of result (if you know): Nov. 20, 2019

(e) Citation of the case (if you know): ~~U.S. v. R~~ NONE

(f) Grounds raised:   
1) Appellate waiver in plea agreement did not bar appeal   
2) Dist. Ct. erred in granting Gov. Motion for leave to file obj. to PSR   
3) 92 days late   
4) Dist. Ct. erred in calculating 5 additional pts. for Ch. 4 enhancement   
5) Dist. Ct. erred in enhancing sentence under cross-reference to U.S.S.G. § 2B2.1   
6) Dist. Ct. erred in sentencing as persistent offender; 7) Dist. Ct. erred on restitution

(g) Did you file a petition for certiorari in the United States Supreme Court? Yes ☐ No ☒

If "Yes," answer the following:

(1) Docket or case number (if you know): \_\_\_\_\_

(2) Result: \_\_\_\_\_

(3) Date of result (if you know): \_\_\_\_\_

(4) Citation to the case (if you know): \_\_\_\_\_

(5) Grounds raised: \_\_\_\_\_

10. Other than the direct appeals listed above, have you previously filed any other motions, petitions, or applications concerning this judgment of conviction in any court?

Yes ☐ No ☒

11. If your answer to Question 10 was "Yes," give the following information: N/A

(a)(1) Name of court: \_\_\_\_\_

(2) Docket of case number (if you know): \_\_\_\_\_

(3) Date of filing (if you know): \_\_\_\_\_

(4) Nature of the proceeding: \_\_\_\_\_

(5) Grounds raised: \_\_\_\_\_

(6) Did you receive a hearing where evidence was given on your motion, petition, or application?

Yes ☐ No ☐

(7) Result: \_\_\_\_\_

(8) Date of result (if you know): \_\_\_\_\_

(b) If you file any second motion, petition, or application, give the same information:

(1) Name of court: \_\_\_\_\_

(2) Docket of case number (if you know): \_\_\_\_\_

(3) Date of filing (if you know): \_\_\_\_\_

(4) Nature of the proceeding: \_\_\_\_\_

(5) Grounds raised: \_\_\_\_\_

(6) Did you receive a hearing where evidence was given on your motion, petition, or application?

Yes ☐ No ☐

(7) Result: \_\_\_\_\_

(8) Date of result (if you know): \_\_\_\_\_

(c) Did you appeal to a federal appellate court having jurisdiction over the action taken on your motion, petition, or application?

(1) First petition Yes ☐ No ☐

(2) Second petition Yes ☐ No ☐

(d) If you did not appeal from the action on any motion, petition, or application, explain briefly why you did not: \_\_\_\_\_

12. For this motion, state every ground on which you claim that you are being held in violation of the Constitution, laws, or treaties of the United States. Attach additional pages if you have more than four grounds. State the facts supporting each ground.

GROUND ONE: IN Effective Assistance of trial Counsel

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim):

*See items 1 thru 14 on the attached memorandum of Points and Authorities in support of Pettittomer's motion to vacate sentence 28 U.S.C. 2255 which is incorporated by reference as if fully stated herein as Ground One.*

(b) Direct Appeal of Ground One:

(1) If you appealed from the judgment or conviction, did you raise this issue?

Yes ☐ No ☒

(2) If you did not raise this issue in your direct appeal, explain why:

(c) Post-Conviction Proceedings:

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes ☐ No ☒

(2) If your answer to Question (c)(1) is "Yes," state:

Type of motion or petition: \_\_\_\_\_

Name and location of the court where the motion or petition was filed: \_\_\_\_\_

Docket or case number (if you know): \_\_\_\_\_

Date of the court's decision: \_\_\_\_\_

Result (attach a copy of the court's opinion or order, if available):

(3) Did you receive a hearing on your motion, petition, or application?

Yes ☐ No ☐

(4) Did you appeal from the denial of your motion, petition, or application?

Yes ☐ No ☐

(5) If your answer to Question (c)(4) is "Yes," did you raise this issue on appeal?

Yes ☐ No ☐

(6) If your answer to question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed:

Docket case number (if you know): \_\_\_\_\_

Date of the court's decision: \_\_\_\_\_

Result: (attach a copy of the court's opinion or order if available):

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue:

**GROUND TWO: INEFFECTIVE ASSISTANCE OF APPELLATE COUNSEL WOODY**

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim):

See the item listed under Ground Two (2) on the attached Memorandum of Points and Authorities in support of Petitioner's Motion to Vacate Sentence 28 USC 2254 which is incorporated here in as if fully restated verbatim.

(b) Direct Appeal of Ground Two:

(1) If you appealed from the judgment or conviction, did you raise this issue?

Yes ☐ No ☒

(2) If you did not raise this issue in your direct appeal, explain why:

(c) Post-Conviction Proceedings:

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes ☐ No ☒

(2) If your answer to Question (c)(1) is "Yes," state:

Type of motion or petition: \_\_\_\_\_

Name and location of the court where the motion or petition was filed: \_\_\_\_\_

Docket or case number (if you know): \_\_\_\_\_

Date of the court's decision: \_\_\_\_\_

Result (attach a copy of the court's opinion or order, if available):

(3) Did you receive a hearing on your motion, petition, or application?

Yes ☐ No ☐

(4) Did you appeal from the denial of your motion, petition, or application?

Yes ☐ No ☐

(5) If your answer to Question (c)(4) is "Yes," did you raise this issue on appeal?

Yes ☐ No ☐

(6) If your answer to question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed:

Docket case number (if you know): \_\_\_\_\_

Date of the court's decision: \_\_\_\_\_

Result: (attach a copy of the court's opinion or order if available):

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue:

GROUND THREE: Other Acts of Prosecutorial Misconduct  
violated the undersigned's Constitutional Rights

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim):

See the item listed under Ground Three (3) on the Attached Memorandum of Points and Authorities in support of Petitioner's motion to vacate Sentence 28 U.S.C. § 2255 which is incorporated verbatim herein as if fully restated here.

**(b) Direct Appeal of Ground Three:**

(1) If you appealed from the judgment or conviction, did you raise this issue?

Yes ☐ No ☒

(2) If you did not raise this issue in your direct appeal, explain why:

**(c) Post-Conviction Proceedings:**

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes ☐ No ☒

(2) If your answer to Question (c)(1) is "Yes", state:

Type of motion or petition: \_\_\_\_\_

Name and location of the court where the motion or petition was filed: \_\_\_\_\_

Docket or case number (if you know): \_\_\_\_\_

Date of the court's decision: \_\_\_\_\_

Result (attach a copy of the court's opinion or order, if available):

(3) Did you receive a hearing on your motion, petition, or application?

Yes ☐ No ☐

(4) Did you appeal from the denial of your motion, petition, or application?

Yes ☐ No ☐

(5) If your answer to Question (c)(4) is "Yes," did you raise this issue on appeal?

Yes ☐ No ☐

(6) If your answer to question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed:

Docket case number (if you know): \_\_\_\_\_

Date of the court's decision: \_\_\_\_\_

Result: (attach a copy of the court's opinion or order if available):

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue:

**GROUND FOUR:** \_\_\_\_\_

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

(b) Direct Appeal of Ground Four:

(1) If you appealed from the judgment or conviction, did you raise this issue?

Yes ☐ No ☐

(2) If you did not raise this issue in your direct appeal, explain why:

(c) Post-Conviction Proceedings:

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes ☐ No ☐

(2) If your answer to Question (c)(1) is "Yes," state:

Type of motion or petition: \_\_\_\_\_

Name and location of the court where the motion or petition was filed: \_\_\_\_\_

Docket or case number (if you know): \_\_\_\_\_

Date of the court's decision: \_\_\_\_\_

Result (attach a copy of the court's opinion or order, if available):

(3) Did you receive a hearing on your motion, petition, or application?

Yes ☐ No ☐

(4) Did you appeal from the denial of your motion, petition, or application?

Yes ☐ No ☐



(5) If your answer to Question (c)(4) is "Yes," did you raise this issue on appeal?

Yes ☐ No ☐

(6) If your answer to question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed: \_\_\_\_\_

Docket case number (if you know): \_\_\_\_\_

Date of the court's decision: \_\_\_\_\_

Result: (attach a copy of the court's opinion or order if available): \_\_\_\_\_

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue:

13. Is there any ground in this motion that you have not previously presented in some federal court? If so, which ground or grounds have not been presented, and state your reasons for not presenting them:  
*All grounds in this motion are presented first in this motion due to appeal to the 8th Cir. having been dismissed on the Gov.'s motion.*

14. Do you have any motion, petition, or appeal now pending (filed and not decided yet) in any court for the judgment you are challenging? Yes ☐ No ☒

If "Yes," state the name and location of the court, the docket or case number, the type or proceeding, and the issues raised:

15. Give the name and address, if known, of each attorney who represented you in the following stages of the judgment you are challenging:

(a) At preliminary hearing: NONE Although Michelle Nahon Moulder filed Notice of Appeal

(b) At arraignment and plea: Michelle Nahon Moulder

(c) At trial: Adam D. Woody

(d) At sentencing: Adam D. Woody

(e) On appeal: Adam D. Woody

(f) In any post-conviction proceeding: \_\_\_\_\_

(g) On appeal from any ruling against you in a post-conviction proceeding: \_\_\_\_\_

16. Were you sentenced on more than one count of an indictment, or on more than one indictment, in the same court and at the same time? Yes ☐ No ☒

17. Do you have any future sentence to serve after you complete the sentence for the judgment that you are challenging? Yes ☐ No ☒

(a) If so, give name and location of court that imposed the other sentence you will serve in the future: \_\_\_\_\_

(b) Give the date of the other sentence was imposed: \_\_\_\_\_

(c) Give the length of the other sentence: \_\_\_\_\_

(d) Have you filed, or do you plan to file, any motion, petition, or application that challenges the judgment or sentence to be served in the future? Yes ☐ No ☐

18. TIMELINESS OF MOTION: If your judgment of conviction became final over one year ago, you must explain why the one-year statute of limitation as contained in 28 U.S.C. § 2255 does not bar your motion.\* (see below)

Being filed pursuant to the BOP mailbox rule pursuant to the determination as set out in *Clay v. U.S.*, 537 U.S. 522 (2003) and timely pursuant to the Supreme Court's Order decided March 19, 2020 and supplemented by its order dated April 15, 2020.

\*The Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA") as contained in 28 U.S.C. §2255, paragraph 6, provides in part that:

A one-year period limitations shall apply to a motion under this section. The limitation period shall run from the latest of:

- (1) the date on which the judgment of conviction became final;
- (2) the date on which the impediment to making a motion created by governmental action in violation of the Constitution or laws of the United States is removed, if the movant was prevented from making such a motion by such governmental action;

- (3) the date on which the right asserted was initially recognized by the Supreme Court, if that right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review; or
- (4) the date on which the facts supporting the claim or claims presented could have been discovered through the exercise of due diligence.

Therefore, Movant asks that the Court grant the following relief: Reverse the undersigned's Conviction and/or Remand for a new trial based upon all grounds asserted in this Motion including but not limited to ineffectiveness of trial and Appellate counsel under the standard set out in Strickland v. Washington, 466 U.S. 668 (1984) and U.S. v. Crowe, 466 U.S. 648 (1984), or any other relief to which movant is entitled.

\_\_\_\_\_  
Signature of Attorney (if any)

I, declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct and that this Motion Under 28 U.S.C. § 2255 was placed in the prison mailing system on 5-31-21 (month, date, year)

Executed (signed) on 5-31-21 (date)

Clifford Thibault  
\_\_\_\_\_  
Signature of Movant

If the person signing is not movant, state relationship to movant and explain why movant is not signing this motion.

Clifford KnKaDe  
32481-045(San)  
Federal Medical Center  
PoBox 15330  
Fort Worth, TX  
76119

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U. S. MARSHALS

Clerk, U.S. District Court  
Western District of Missouri  
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1400 U.S. Court House,  
222 John A Hammuns Pkwy  
Springfield, MO  
65806

Rec'd  
JUN 9 2021

